

USDC SCAN INDEX SHEET



STEPHEN W BONEY INC

BONEY SERVICES INC

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3:95-CV-00491

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DECL.

ORIGINAL

FILED

JAN 20 1998

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA



1 Janice Patrice Brown, Esq. (#114433)
 2 J. Scott Scheper, Esq. (#155477)
 3 SELTZER CAPLAN WILKINS & McMAHON
 4 A Professional Corporation
 5 2100 Symphony Towers
 6 750 B Street
 7 San Diego, California 92101
 8 Telephone: (619) 685-3003

9 Attorneys for Defendant
 10 BONEY'S SERVICES, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

10 STEPHEN W. BONEY, INC.,	)	CASE NO. 950491E (POR)
11 Plaintiff,	)	DECLARATION OF JANICE PATRICE BROWN
12 vs.	)	IN OPPOSITION TO PLAINTIFF'S MOTION
13 BONEY'S SERVICES, INC.,	)	FOR PARTIAL SUMMARY JUDGMENT
14 Defendant.	)	DATE: February 2, 1998
	)	TIME: 10:30 a.m.
	)	COURTROOM: 3
	)	JUDGE: William B. Enright

17 I, Janice P. Brown, declare as follows:

18 1. I am a member of Seltzer Caplan Wilkins & McMahon, counsel
 19 of record for defendant Boney's Services, Inc. ("BSI"). I have
 20 personal knowledge of the facts set forth in this declaration and could
 21 and would testify to those facts if called as a witness.

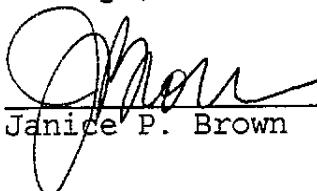
22 2. Attached at Exhibit "A" to this Declarationn is a true and
 23 correct copies of select pages of the Deposition Transcript of Steve
 24 Boney, Volume II, taken on July 19, 1995.

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CP

1 I declare the following under penalties of perjury under the laws
2 of the United States of America.

3 Executed on January 19, 1998, in San Diego, California.

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Janice P. Brown

CERTIFIED COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEPHEN W. BONEY, INC.

PLAINTIFF

NO. 950491E (POR)

VS

BONEY'S SERVICES, INC.

DEFENDANTS

DEPOSITION OF

STEPHEN W. BONEY

VOLUME II

Pages 181 - 351

TAKEN ON: Wednesday, July 19, 1995

TAKEN AT: 1750 B Street, Suite 2100
San Diego, California

REPORTED BY: DEBRA A. COVELLI
CSR NO. 6870

Vail
Christians
&
ASSOCIATES

Certified Shorthand Reporters
550 West C Street, Suite 1440, San Diego, California 92101-8511
(619) 544-8344 • FAX 544-8345

EXHIBIT A

1 APPEARANCES:

2 PLAINTIFF: ARTER & HADDEN
3 401 West A Street, 26th Floor
4 San Diego, California 92101
5 BY: HENRY G. KOHLMANN

6 ARTER & HADDEN
7 201 California Street, 14th Floor
8 San Francisco, California 94111
9 BY: DENNIS McATEER

10 DEFENDANT: SELTZER CAPLAN WILKINS & McMAHON
11 750 B Street, Suite 2100
12 San Diego, California 92101
13 BY: JANICE PATRICE BROWN

14 VIDEOGRAPHER: AJL VIDEO TAPING SERVICES
15 1919 Grand Avenue, Suite 2C
16 San Diego, California 92109
17 BY: ROBERT JORDAN

18 ALSO PRESENT: STANLEY BONEY
19 SCOTT BONEY

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1 Boney's Marketplace in writing?

2 A. No.

3 Q. Who did you tell, if anyone, that they should
4 use the trade name Boney's Marketplace?

5 A. Stan Boney.

6 Q. Why did you tell him that they should use --
7 and by "they," Scott and Stan -- should use the name
10:29:00 8 Boney's Marketplace for their El Cajon and Vista stores?

9 A. I think I was asked.

10 Q. Who asked you?

11 A. Stan.

12 Q. And what did he ask you?

13 A. If I thought the name Boney's would sound
14 good on the stores.

15 Q. Any other -- is there any other facts that
10:29:30 16 you can recall that support the allegation in the
17 complaint that you advised Stan and Scott to commence
18 using the trade name Boney's Marketplace for the El Cajon
19 and Vista stores?

20 A. No.

21 Q. So you recall prior to the opening of the
22 El Cajon and Vista stores by your brother that Stan asked
23 you whether you thought that the name Boney's would sound
10:30:00 24 good on the stores?

25 A. Yes.

26 Q. And that is the sole basis for that part of
27 the allegation in the complaint?

28 A. Yes.

1 other -- of the conversation?

2 A. Yes.

3 Q. And what are they?

4 A. I don't want to repeat them.

5 Q. Why not?

6 A. They're personal.

7 MR. McATEER: Are you stating that this doesn't
8 relate at all to the business of the lawsuit, it's
9 personal matters?

10 THE WITNESS: Correct.

11 BY MS. BROWN:

12 Q. Did you tell her that you thought things
13 would be better when your father was dead?

14 A. No.

15 Q. Did you tell Stan or Scott that they should
10:35:30 16 have outside vendors affix the name Boney's Marketplace on
10:36:00 17 certain goods back in '82 and '83?

18 A. No.

19 Q. Have your brothers ever helped you?

10:36:30 20 A. What do you mean by "helped"?

21 Q. In any fashion.

22 MR. McATEER: Objection. Overbroad.

23 THE WITNESS: Be more specific.

24 BY MS. BROWN:

25 Q. Okay. In business.

26 MR. McATEER: Objection. Overbroad.

27 THE WITNESS: It depends on which occasion.

28 ////

1 MS. BROWN: Mr. Boney, you're hooked.

2 THE WITNESS: Thank you.

3 THE VIDEOGRAPHER: Off the record at 3:50 p.m.

4 (Recess taken.)

15:50:30 5 THE VIDEOGRAPHER: Back on the record at 3:52 p.m.

15:52:33 6 MR. McATEGR: Could you reask your first question
7 about 68.

8 BY MS. BROWN:

9 Q. Perhaps I can just say, in light of the
10 conference that you had with your lawyer, do you need to
11 change your answer to the question I asked you about
12 paragraph -- I mean, sentence 1 in paragraph 68?

13 A. Yes.

14 Q. Go ahead and answer.

15:53:00 15 A. With regard to the pharmaceutical products
16 that was actually Windmill Farms private label vitamins
17 that was changed to be a Boney's label vitamin when the
18 two Windmill Farm stores were changed to Boney's
19 Marketplace by Stan and Scott. And that was in 1985 that
15:53:30 20 we started selling that same line of vitamins in Pacific
21 Beach under that label.

22 Then in regard to bakery goods and other
23 foodstuffs, that was actually in 1986, and that was
15:54:00 24 started in Escondido when we opened that store.

25 Q. And what is meant by the "other foodstuffs"?

26 A. Other foodstuffs would be cookies, would be
27 muffins, miscellaneous baked items.

28 Q. By "foodstuffs," you mean bakery items

1 basically?

2 A. Yes.

3 Q. And all of the foodstuffs that are mentioned
15:54:30 4 there were begun by you or your company in 1986 or
5 thereafter?

6 A. Yes.

7 Q. So the pharmaceuticals that are mentioned in
8 the first sentence of paragraph 68 actually were at
9 Steve -- I mean, Stan and Scott's store before you opened
10 your store?

11 A. Yes.

12 Q. Did you copy Stan and Scott's use of the
13 pharmaceutical products when you opened up your Escondido
15:55:00 14 store?

15 A. We used the same suppliers and we used the
16 same product line and it was packed for and distributed
17 by, I believe, the Boney's El Cajon.

18 Q. So the answer is yes?

19 A. It wasn't Stan and Scott's then. It was
20 whatever the entity was, the Boney's Marketplace in
21 El Cajon.

22 Q. Was it Boney & Boney, Inc.?

23 A. If that's what the ownership was there.

15:55:30 24 Q. So your store in Escondido copied the
25 pharmaceutical product from Boney & Boney, Inc.?

26 MR. McATEER: That mischaracterizes his testimony.

27 MS. BROWN: No. I'm asking --

28 MR. McATEER: I believe he said he bought it from.

1 BY MS. BROWN:

2 Q. I'm asking the question, okay.

3 Did you copy the pharmaceutical products that
4 carried the name Boney's Marketplace from the El Cajon
5 Boney's Marketplace store when you opened your store in
6 Escondido?

7 A. No. We purchased it from the same supplier,
8 and that supplier furnished us with that product line.

15:56:00 9 Q. At the time that you purchased it from the
10 supplier in 1986, your brothers had already been using
11 that product, correct?

12 A. Correct.

13 Q. They had been selling the pharmaceuticals
14 with Boney's Marketplace name on it?

15 A. Correct.

16 Q. And you just went to the same supplier and
17 sold the same product at your stores?

18 A. Correct.

19 Q. Did your -- prior to your opening of the
20 store -- your store in Escondido, did your brothers have
21 bakery good items that used the Boney Marketplace name?

15:56:30 22 A. Not that I recall.

23 Q. You can't recall one way or the other?

24 MR. McATEER: By the way, this subject matter area
25 was extensively examined by Mr. Courier if you look
26 through the transcript. And so you're getting into an
27 area that was fully covered on the bakery goods that they
28 were supplying and that he was supplying during the

ORIGINAL

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 10 Attorneys for Defendant
 11 BONEY'S SERVICES, INC.

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 UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

11 STEPHEN W. BONEY, INC.,)	CASE NO. 950491E (POR)
12 Plaintiff,	)	DECLARATION OF SERVICE BY
13 vs.	)	FACSIMILE AND FEDERAL EXPRESS
14 BONEY'S SERVICES, INC.,)	
15 Defendant.)	

16
 17
 18 DECLARATION OF SERVICE BY FACSIMILE AND FEDERAL EXPRESS

19 I, the undersigned, hereby declare that I am over the age of
 20 eighteen years and not a party to this action; I am employed in the
 21 County of San Diego, California; my business address is 2100 Symphony
 22 Towers, 750 B Street, San Diego, California 92101; and that I served
 23 the following document:

24 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
 25 PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT;

26 DECLARATION OF STANLEY BONEY OPPOSITION TO PLAINTIFF'S MOTION
 27 FOR PARTIAL SUMMARY JUDGMENT; and

28 DECLARATION OF JANICE PATRICE BROWN IN OPPOSITION TO PLAINTIFF'S
 MOTION FOR PARTIAL SUMMARY JUDGMENT

1 on the below named person(s) by faxing a copy and placing a copy in a
2 separate envelope, for each address named below, and depositing each
3 to be served via Federal Express, at San Diego, California, on
4 January 19, 1998.

8 Dennis McAteer, Esq. Attorneys for Plaintiff
Terry J. Mollica, Esq. STEPHEN W. BONEY, INC.
9 Arter & Hadden
10 201 California Street, 14th Flr.
San Francisco, CA 94111

11 I declare under penalty of perjury of the laws of the United
12 States that the foregoing is true and correct. Executed on
13 January 19, 1998, at San Diego, California.

